IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14695 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRAKANTBHAI MAGANLAL JETHWA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14695 of 2004

MR MUKESH H RATHOD for Petitioner No. 1

MR SP HASURKAR, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 19/01/2005

ORAL JUDGEMENT

Rule. Mr.S.P.Hasurkar, learned AGP waives service of notice of rule on behalf of the respondents.

At the joint request of the parties, the petition is taken up for final disposal today.

2. By order dated 3rd November 2004 while issuing notice, the learned Judge had observed that the learned Special Judge and the Sessions Judge, Junagadh shall endeavour to try and decide the Special Case No. 5/95 as expeditiously as possible and preferably by 22nd December 2004. Though the learned counsel for the petitioner is not in a position to state with precision the exact stage at which the said criminal case is pending, he submits that the Department be prevented from proceeding further with the departmental inquiry at least for a reasonable period during which time the petitioner would approach the learned Sessions Judge and attempt to conclude the pending criminal case in light of the observations made by this Court. Counsel for the petitioner submits that pursuant to the directions given by this Court on 3.11.04, the respondents have permitted the petitioner to be represented through Shri K.F.Rana, a retired Panchayat employee in the departmental proceedings.

3. Though the question of permitting the Government to proceed further with the departmental proceedings when on identical charges criminal prosecution is also pending has to be examined in the facts of each case in light of the various decisions of the Hon'ble Supreme Court, including in the case of M.Paul Anthony v. Bharat Gold Mines Ltd., AIR 1999 SC 1416 and in the case of State of Rajasthan v. B.K.Meena, AIR 1997 SC 13, in the facts of the case, since the criminal prosecution is pending since 1995 and the departmental chargesheet is issued only recently in the year 2004, I find that the request of the learned counsel for the petitioner is reasonable.

4. In the result, it is directed that the respondent shall not proceed further with the departmental inquiry for a period of one month from today within which time, it will be open for the petitioner to take up the issue with the learned Sessions Judge to bring an early end to the criminal case pending. It is, however, made clear that if within the time stipulated hereinabove, the criminal case is not over, it will be open for the respondents to proceed further with the departmental inquiry and conclude the departmental proceedings. With these directions, the petition is allowed to the above extent. Rule is made to the aforesaid extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)